

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GENERAL ELECTRIC COMPANY,

Plaintiff,

v.

SIEMENS ENERGY, INC.,

Defendant.

Case No. 3:21-cv-00025 (JAG)

**DECLARATION OF RUSSELL YOUNG IN SUPPORT OF
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Russell Young, declare pursuant to 28 U.S.C. § 1746:

1. My name is Russell Young. I am a Sales Director for General Electric's ("GE") Power division. I have been in that position since August of 2019, after approximately six years as an Account Manager. I have worked in GE's Power division for fifteen years, during which time I have also served as a Field Engineer, Application Engineer, and a Business Development Manager. I am based in Midlothian, Virginia. As a Sales Director for GE's Power division, I oversee the development of GE's bidding packages for gas turbine Requests for Proposals ("RFPs") issued by public utilities and other power providers.

2. I submit this declaration on behalf of GE in support of GE's motion for a preliminary injunction in the above-captioned action. If called as a witness at a hearing, I would testify to the facts set forth in this declaration, all of which reflect my personal knowledge.

GE and the Gas Turbine Bidding Process

3. GE is a high-tech industrial company that operates worldwide through four industrial segments, including its Power segment. GE Power manufactures and sells gas turbines, which are large industrial machines that convert natural gas into electricity. GE sells those gas turbines to public utilities and other power providers. It also provides maintenance and other services related to gas turbines.

4. GE manufactures two types of gas turbines: heavy-duty turbines and aeroderivative turbines. Heavy-duty gas turbines come in several different “classes,” including the “F-class and “H-class.” The “F-class” gas turbine is an older style of heavy-duty turbine trusted for its reliability and flexibility. The “H-class” gas turbine is a more recently introduced style of heavy-duty turbine that incorporates advanced technologies. Aeroderivative gas turbines are based on technologies first developed and used in aircraft engines and are smaller and lighter than heavy-duty turbines. Aeroderivative turbines typically produce less power than heavy-duty turbines, but with higher efficiencies. Siemens Energy, Inc. (“Siemens”) is one of GE’s principal competitors in the gas turbine market.

5. The products and services at issue in this case—gas turbines and related long-term maintenance services—are sold by both GE and Siemens around the world.

6. Gas turbine projects are awarded by public utilities and other power providers through a formal and structured bidding process. As I explain in greater detail below, GE and other manufacturers bid for the opportunity to sell their gas turbines to utility providers in response to requests for proposal (“RFPs”) issued by those providers. I have personally overseen the development and submission of GE’s bidding packages for approximately 20–30 separate gas turbine RFPs. I have meaningfully contributed to

the preparation of bid packages in approximately 50–60 separate gas turbine RFPs during my tenure at GE.

7. Turbine RFPs are often prolonged events. Competitors typically know about the RFPs months or even years before they are issued, and the RFP process itself can take many months to complete.

8. When a public utility or other power provider issues a gas turbine RFP, it typically will seek both (1) new gas turbines for one or more of its power plants, as well as (2) the provision of long-term maintenance services for the new gas turbines. It is important that both proposals be considered in the evaluation of the bid package to fully understand the lifecycle cost of a project.

9. In response to RFPs for gas turbines, GE and other competing manufacturers submit formal “bid packages” containing commercial terms and technical specifications for the turbine models being offered, as well as commercial terms and technical specifications for the provision of long-term maintenance services for those turbines.

10. Typically, the manufacturer that wins the “product” contract for an RFP (*i.e.*, the contract to supply new gas turbines) also wins the “service” contract (*i.e.*, the contract to provide long-term maintenance services for the new gas turbines). For many RFPs, the service contract is an even more valuable source of revenue for a manufacturer than the product contract. The service contract provides a continuous revenue stream to the manufacturer for many years—typically between 15 and 20 years—whereas the product contract provides a substantial one-time revenue stream. Each set of product and

service contracts for each new project in the gas turbine market is worth tens or hundreds of millions of dollars.

11. GE's bid packages for gas turbine RFPs include a tremendous amount of highly confidential pricing and technical information about its turbines and maintenance services.

12. The precise way that GE tailors its technical specifications for each customer and project is specific to GE, and the particular technical capabilities of GE's turbines would not be knowable to anyone unless GE shared them, as it does with potential customers in its bid packages for RFPs.

13. GE's confidential technical specifications for its gas turbines include, among other things: (1) "output capacity," *i.e.*, the maximum amount of electricity GE's turbines can generate, in megawatts (MW); (2) "efficiency," a measure of how effectively GE's turbines convert the energy in natural gas into electrical energy; (3) "emissions levels," *i.e.*, the rate at which GE's turbines emit nitrogen oxide (NOx), carbon monoxide (CO), and other regulated pollutants; and (4) "capital cost," a metric that compares the price of a turbine with its output capacity to show how expensive a power provider's purchase of that output capacity is, expressed in terms of how many dollars it takes to purchase one kilowatt of output capacity (\$/kW).

14. GE also maintains confidential product pricing, including base, option, and volume discount pricing for its gas turbine bid packages.

15. In addition, GE maintains confidential pricing and formulas for the service and maintenance that it provides pursuant to its service contracts—otherwise known as Long-Term Service Agreements ("LTSAs")—such as GE's base and option service

pricing and GE's proprietary formulas and procedures for the maintenance it performs on its turbines, including the "inspection interval," *i.e.*, the recommended length of time between maintenance events, for GE's gas turbines.

GE's Efforts to Protect Its Valuable Confidential Information

16. In the regular course of business, GE has processes for sequestering its confidential pricing and technical information about its gas turbines—including the information included in GE's "bid packages"—in server locations accessible only to certain GE employees on a need-to-know basis. The employees in GE's Gas Power division are instructed not to share GE's information outside the division. Employees also sign confidentiality agreements promising to keep GE's pricing and technical data about its gas turbines and services confidential.

17. GE carefully protects the confidentiality of the information it submits in RFP bid packages because that information has tremendous competitive value. A competitor armed with this confidential information could adjust its own bids in many different ways to gain a competitive advantage over GE. For example, a competitor that knows GE's pricing and technical data across many different metrics could tailor its bid package to beat GE's in dozens of ways, depending on what is the most advantageous choice for the competitor. The competitor could simply drop its overall product price to beat GE's. The competitor could focus on ensuring that it beats GE in capital cost—*i.e.*, the cost to the power provider of purchasing each kilowatt of output capacity—if it thinks the particular customer may care more about that value measurement than about overall product price. The competitor could simultaneously analyze the output capacity, efficiency, and emissions levels of its offerings to make sure that some or all of these measurements line up favorably as compared to GE's—again, depending on which of

these specifications is most important to the customer in the context of the particular RFP. Or, if the competitor finds itself lagging behind GE in product pricing or technical specifications for its turbines, it can focus on improving its LTSA bid package by dropping its overall service pricing or tweaking the inspection intervals for its offered turbines so that it can offer advantages on the LTSA side of its bid package that outweigh GE's advantages on the product side.

18. It is broadly recognized in the power generation industry that a bidder's pricing and technical information is both valuable and highly confidential, and deserves to be treated as such. Thus, before submitting bids in response to an RFP, manufacturers routinely enter into non-disclosure agreements ("NDAs") with power providers, who promise to keep the bidding information they receive confidential. GE always enters into NDAs with power providers before submitting confidential bidding information in response to an RFP.

The Peakers Project

19. In early 2018, I learned through discussions with Dominion Energy, Inc. ("Dominion") that Dominion was evaluating options for a potential new peaking plant. In general terms, a "peaking plant", also referred to as a "peaker," is a power plant that is only active when there is high demand for electricity, *i.e.*, during periods of "peak" demand, and usually operate for a short duration during such periods.

20. In March 2019, Dominion issued an RFP seeking bids for the supply of up to 2,000 MW of gas turbines (the "Peakers Project").

21. At the time that Dominion issued the Peakers Project RFP, I was a GE Account Manager. In that role, I led GE's bid submission process for the Peakers Project RFP. I oversaw a team of 15–20 application engineers that put together GE's

Peakers Project proposal and hundreds of accompanying exhibits detailing pricing and technical information for the gas turbines and long-term maintenance services GE included in its Peakers Project bid package. This detailed information is confidential, and GE protects it through the various measures described in paragraphs 16–18 above.

22. Prior to Dominion’s release of the Peakers Project RFP, and in anticipation of that RFP, GE and Dominion entered into a Reciprocal Nondisclosure Agreement dated February 28, 2019. Pursuant to that NDA, Dominion was contractually obligated to keep GE’s confidential information secret. As noted in paragraph 18, entry into such NDAs is standard for projects of this type, and GE always insists on them.

23. Both GE and Siemens were bidders for the Peakers Project. GE submitted its bid for the Peakers Project on May 10, 2019.

24. After submitting its initial bid package in May 2019, GE provided additional information to Dominion over the next month in response to five Requests for Clarification.

25. In order to provide Dominion with a broad range of options, GE’s bid package for the Peakers Project included proposals for paired configurations of gas turbine units in 500 MW tranches, up to a total of 8 turbine units or 2,000 MW of gas turbines. As a result, GE’s bid package included confidential pricing and technical information about four of its gas turbine [REDACTED]

[REDACTED]
[REDACTED]—as well as pricing and technical information for GE’s maintenance services for those turbines. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. Access to this confidential pricing and technical information contained in GE's Peakers Project bid package would give any competitor a "blueprint" to competing against GE's Peakers Project bid. That competitor could incorporate aspects of GE's confidential information into its own analysis of how to bid its own products and adjust its Peakers Project bid to ensure that it was successful.

27. In September of 2020, GE was informed that, in May and June of 2019, a Dominion Energy employee sent six documents pertaining to GE's bid for the Peakers Project to a Siemens account manager (the "Documents"). I have personally reviewed the Documents, and they contain GE confidential information, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. GE was further informed that the Documents were further disseminated among Siemens employees in Siemens' Power Systems, Power Generation, and Gas & Power business units.

29. Because it is industry practice for gas turbine manufacturers to enter into NDAs to protect their confidential bidding information before submitting bid packages in response to gas turbine RFPs, any Siemens employee who received and further disseminated the Documents should have been well aware that the Documents contained GE confidential information and that Dominion had provided this information to Siemens in violation of Dominion's contractual duty not to disclose GE's confidential bidding information.

30. Between July and August 2019, I learned that Dominion had awarded the Peakers Project product and services contracts to Siemens. In the second quarter of 2020, McCoy Power Reports reported in its six-month 2020 report that Dominion had issued a Full Notice to Proceed for six F-class turbines, or 1,500 MW of gas turbines, to Siemens.

31. Based on Dominion's award of six F-class turbines, or 1,500 MW of gas turbines, I expect that if GE had won the Peakers Project, the resulting product and services contracts would have been worth between \$225 million and \$340 million in turbine unit manufacturing and servicing revenue over the next 15 years.

32. In August 2020, Dominion canceled the Peakers Project, as was later reported by McCoy Reports in the nine-month 2020 report.

The South Carolina RFP

33. Dominion issued an RFP in November 2020 for several gas turbines it intends to purchase for its South Carolina state utility (the "South Carolina RFP"), doing business as Dominion Energy South Carolina. GE expects the "product contract" value

of this South Carolina project to be greater than \$150 million, plus at least \$60 million in estimated long-term maintenance revenues. The winning bidder of the South Carolina RFP will work on manufacturing projects for Dominion over a four-year period from 2021–2024, in addition to the much longer time period that would cover the accompanying service agreement(s).

34. Initial bid responses to the South Carolina RFP were submitted on January 19, 2021. Dominion is expected to select a winning bidder for the South Carolina project in or around May 2021. Dominion likely will request supplemental bid responses from bidders between now and May 2021.

35. GE submitted a bid for the South Carolina RFP, and I expect that Siemens submitted a bid as well as they were represented during the pre-bid conference call.

36. [REDACTED]

37. [REDACTED]

38. If permitted, Siemens could use GE's technical and pricing information gleaned from the Documents to prepare bid packages in which Siemens includes its own [REDACTED] turbines—as well as other similar classes of turbines, by extrapolating from the data it has to other models. That is, Siemens could use

information about a competitor's pricing or technical information for one gas turbine model to strategically guess, or "reverse engineer," the technical capacities of, or pricing for, that competitor's other models.

39. More specifically, as a sophisticated gas turbine manufacturer, Siemens has the capacity to extrapolate the information it possesses about GE's [REDACTED] [REDACTED] turbines to strategically guess the technical capacities of, or pricing for, other models in GE's [REDACTED] product lines. For example, Siemens' knowledge of the pricing and technical specifications for GE's [REDACTED] turbine would allow it to bid at a competitive advantage against GE's similar [REDACTED] turbines, because of the "informed" inferences Siemens would be able to draw about the pricing and technical specifications of those turbines. GE's Trade Secrets could even inform Siemens' assessment of GE's expected bids for different gas turbines or entirely different turbine classes or categories, including gas turbines for international power grids that operate on 50 hertz ("Hz") power grids instead of United States power grids, which operate on 60 Hz.

40. Siemens' ability to extrapolate the pricing and technical specifications of GE's [REDACTED] turbines gives it an advantage in bidding against GE not just with respect to those particular turbines, but with respect to many of GE's gas turbines that GE includes in bid packages for RFPs for which Siemens is a head-to-head competitor.

41. Moreover, Siemens' possession and knowledge of GE's confidential information do not just give it a competitive advantage in bidding against GE for gas turbine equipment projects; they also give it a similar advantage in bidding against GE

for gas turbine services projects as well. Siemens could also extrapolate GE's pricing, costs, and proprietary maintenance formula and procedures to benefit its long-term service and maintenance offers. As mentioned above, this is of particular importance, because the service contract is often a more valuable source of revenue for a manufacturer than the product contract.

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Future Bids

43. GE often bids turbines that have technologies that are very similar to the turbines included in its Peakers Project bid package. These turbines include, among others, its [REDACTED] turbines and its [REDACTED] turbines.

44. During the next six months, GE intends to include the same or similar turbine models it bid for the Peakers Project RFP in several upcoming bids for gas turbine projects, many of which GE expects Siemens may compete for.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1st, 2021, in Chesterfield County, VA.



Russell Young